

REMARKS

In view of the preceding amendments and the comments which follow, and pursuant to 37 CFR §1.111, amendment and reconsideration of the Official Action of July 20, 2005 is respectfully requested by Applicant.

Claims 42, 43, 50, 51, and 54 have been amended. Claims 62 and 63 are new dependent claims. The recitation added to claim 42 was previously recited in claim 43. Support for “measuring” added to claim 54 is found on page 1, line 12, and on page 5, line 8, *inter alia*, of the originally filed specification. Support for new claims 62 and 63 is found in previously presented claims 50 and 51. No new matter has been added.

Claims 42-63 are currently pending for examination.

Rejections under 35 USC §112, first and second paragraphs

Claim 54 has been rejected for recitation of “the constant distance”. The examiner argues that there is insufficient antecedent basis for this limitation.

In response, Applicant has amended claim 54 by inserting the modifier “measuring” into the claim so that the recitation reads “constant measuring distance”. Antecedent basis is found in the specification on page 1, line 12, and on page 5, line 8, *inter alia*. The examiner’s reconsideration of the rejection is respectfully requested by Applicant.

Claims 50 and 51 have been rejected for their recitation of “preferably”. The examiner argues that this is not a positive limitation and further, it is indefinite.

In response, Applicant has amended claims 50 and 51 by deleting the “preferable” elements and reciting them instead in newly added claims 62 and 63, respectively. The examiner’s reconsideration of the rejection is respectfully requested by Applicant.

Rejection under 35 USC §103 (a)

Claims 42-61 have been rejected under 35 USC §103 (a) as being unpatentable over Watanabe, U.S. Patent No. 4,577,095 (hereinafter “Watanabe”) in view of Spink et al, U.S. Patent No. 5,841,149 (hereinafter “Spink”). The examiner argues that, with regard to claims 42-47, 54, 57, and 59-61, Watanabe discloses in Figure 1a a test strip with a target surface; a measuring head arranged at a distance from the target surface, wherein the measuring head comprises sensors 5-7 for measuring radiation from the sample;

an optical triangulation unit 14; a control device for adjusting the distance between the measuring head and the target surface to a predetermined value 16, thereby permitting accurate analysis of the analyte by the measuring head (see Abstract and col. 2, l. 48 – col. 3, l. 48). Watanabe teaches using passive sensors, therefore does not teach the claimed signal source for radiating the sample and detecting reflections. Spink teaches a similar system for analyzing a sample using active measuring head (see Abstract). It is the Examiner's position that it would have been obvious to modify Watanabe's system to use an active measuring head for detecting reflection and obtain accurate results by analyzing specific reflections from the object to be analyzed.

Since Applicant's independent claims are claims 42 and 59, the following arguments are directed specifically to those claims. Applicant's arguments apply equally to the remaining claims 43-58 and 60-63, however, and the remaining claims should enjoy the same patentability as the claims from which they depend.

Applicant traverses the rejection and argues that the Watanabe and Spink references do not disclose or suggest all the elements recited in the claimed invention. Neither Watanabe nor Spink disclose an analytical system for reflectometric analysis of an analyte in a sample liquid. Neither reference discloses or suggests a test strip with a target surface for application of a sample liquid. The element referenced by the examiner in Fig. 1 of Watanabe is believed to be (1), which is a semiconductor substrate. Further, the references do not disclose a source for radiating the sample. Finally, a light emitter directed towards the target surface in an incidence axis is not taught by the references.

The examiner argues that an optical triangulation unit (14) is taught. However, Applicant points out that a triangulation unit is not disclosed. In the broadest sense, the Watanabe reference relies on a one-dimensional fourier analysis by differentiating waveforms received from scanning a metal pattern which is present on the surface of a semiconductor substrate. In other words, a focused image plane is positioned between two out-of-focus image planes, and in the alignment, a deviation of the focus in the optical axis is determined. This requires a defined pattern P1 with edges in order to detect the waveforms of Figs. 3 and 5. Applicant has amended claim 42 to more structurally define the triangulation unit. In clear contrast thereto, all three sensors of Watanabe are oriented – partly by half mirrors – in the same optical axis perpendicular to the substrate and do not intercept the incidence axis of a light emitter.

The Spink reference relies upon a different principle, i.e., the measurement of travel time of a beam of light (Abstract) in a different technical field, i.e., surgical microscopy, than the present invention. It does not disclose a triangulation unit for detecting a distance but rather relies on the renunciation of triangulation (col. 4, l. 61).

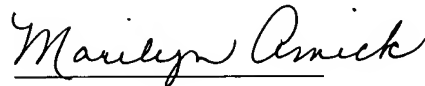
For the reasons given above, Applicant argues that the examiner's case for *prima facie* obviousness has not been made, and he respectfully requests the examiner's reconsideration of the rejection.

Applicant submits that his application is now in condition for allowance, and favorable reconsideration of his application in light of the above amendments and remarks is respectfully requested. Allowance of claims 42-63 at an early date is earnestly solicited.

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The examiner is hereby authorized to charge any fees associated with this Amendment to Deposit Account No. 02-2958. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

A handwritten signature in cursive script, reading "Marilyn Amick", is written over a horizontal line.

Marilyn L. Amick
Reg. No. 30,444

Customer No. 23690
Phone: 317-521-7561
Fax: 317-521-2883